Court of Appeals, State of Michigan

ORDER

In re A Ellis Minor

Docket Nos. 301884; 301887

LC No. 10-495589

Karen M. Fort Hood
Presiding Judge

Pat M. Donofrio

Amy Ronayne Krause
Judges

On the Court's own motion, it is ordered that the June 14, 2011 per curiam opinion and the August 9, 2011 order amending that per curiam opinion are hereby VACATED.

The Court orders that a published per curiam opinion in the above referenced cases is hereby issued as of today's date and is attached.

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 25 2011
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 14, 2011

In the Matter of A. Ellis, Minor.

Nos. 301884 and 301887
Wayne Circuit Court
Family Division
LC No. 10-495589

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to A. Ellis. We affirm.

Respondents are the child's parents. When A. Ellis was less than two months of age, Children's Protective Services (CPS) received a complaint that the child had been brought to the hospital with, to understate the situation, injuries from physical abuse. In fact, skull x-rays and skeletal surveys revealed that A. Ellis had swelling and multiple skull fractures on the upper rear right side of his head. He had internal bleeding inside the skull, over the coating of the brain, in the area of the fractures as well as on the left side of his head. In the area of the fracture, he had reduced blood supply to his brain. A. Ellis had thirteen broken bones, including seven partially-healed fractures to his posterior ribs, with three breaks on his right and four on his left. He also had fractures to bones in an arm and in his legs.

Neither respondent was able to provide an explanation for these severe injuries, and they agreed that they were A. Ellis's only caretakers. They explained that A. Ellis had been particularly fussy and crying more than usual. A physician qualified as an expert in child abuse and neglect, however, was able to explain the injuries. The rib fractures resulted from physical abuse and very forceful squeezing of his rib cage, especially the posterior injuries. The fractures to A. Ellis's arm and leg bones were in the metaphysis portion of the bones[1], which is significant because fractures in that area are very highly specific for child abuse and typically occur when babies are shaken very forcefully. Finally, none of the child's injuries appeared to be accidental,

[1] The metaphysis is a transitional section of long bones between the long tubular shaft (the diaphysis) and the expanded ends (the epiphyses).

related to any genetic problems, or the result of a difficult childbirth. Injuries caused by, say, being dropped or hitting his head against a faucet would look different. The physician's expert opinion is that A. Ellis suffered "abuse head trauma and physical abuse."

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998). If a statutory ground for termination is established, and the trial court finds "that termination of parental rights is in the child's best interests the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5).

This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

Respondents' parental rights were terminated pursuant to MCL 712A.19b(3)(b)(i) (parent abused child), (b)(ii) (parent failed to prevent abuse), (j) (child would likely be harmed if returned to the parent), and (k)(iii) (abuse included battery or torture). Respondents argue that the trial court erred in terminating their rights. We disagree.

The most significant and interesting argument respondents raise is that it is impossible to determine which of them committed this heinous abuse of the minor child. That would be an extremely relevant, and possibly dispositive, concern in a criminal proceeding against either or both of them. However, it is irrelevant here. When there is severe injury to an infant, it does not matter whether respondents committed the abuse at all, because under these circumstances there is clear and convincing evidence that they did not provide proper care. *In re Edwards*, unpublished opinion per curiam of the Court of Appeals, issued Feb 21, 2006 (Docket No 264477) (slip op at p 2). While *Edwards* is unpublished and therefore not binding, MCR 7.215(C)(1), we find its reasoning sound and persuasive. See *People v Jamison*, ___ Mich App ___, ___; ___ NW2d ___ (2011) (Docket No. 297154, slip op at p 4).

Other cases from this Court have reached similar conclusions from similar facts. We find those cases to be persuasive, as well.

In *In re Armstrong*, unpublished opinion per curiam of the Court of Appeals, issued Oct 15, 2006 (Docket No 266856), a three-month-old child was treated for multiple non-accidental fractures; they were determined to be the result of abuse, but because the child had several caregivers, it was not possible to determine the actual perpetrator. This Court nevertheless found termination of the parents' parental rights appropriate, reasoning that the multitude of injuries

over an extended period of time showed that the parents could have prevented the abuse but failed to do so, and so the child would likely be injured again if returned to either of their care. In *In re Rangel*, unpublished opinion per curiam of the Court of Appeals, issued Oct 10, 2006 (Docket No 268172), the parents were the sole caretakers of a 20-month-old child who suffered severe non-accidental wounds, so at least one of them must have caused the injuries, and their joint denial of knowledge of the source of injury showed a reasonable likelihood that the child would suffer further injury in their care. In *In re Turner*, unpublished opinion per curiam of the Court of Appeals, issued Jan 20, 2009 (Docket No 286133), this Court reasoned that because the respondents were the sole caregivers of a non-accidentally injured child, the trial court had "little choice but to conclude that one or both parents abused [the child] and that the other parent failed to protect him."

Again, we find the reasoning in the above cases persuasive and applicable here. The trial court's decision to terminate respondents' parental rights is supported by the law and by the facts apparent from the record. Respondents lived together in a small apartment. They both testified that they were the only two individuals that cared for the child. The child suffered numerous non-accidental injuries and the explanations provided were inconsistent with the extent of the child's injuries. The injuries were numerous, highly specific to child abuse, and indicative of very high impact; they were inconsistent with any sort of accident. The fact that many of them were in various stages of healing showed that A. Ellis had suffered multiple instances of abuse over a prolonged time. The physician testified that, while the child may not have been crying constantly, he would have shown signs of distress at least periodically through lack of appetite, sleeping more, and increased fussiness. Respondents could not offer any plausible alternative explanation for A. Ellis's injuries. We find that the trial court properly concluded that at least one of them had perpetrated the abuse and at least one of them had failed to prevent it; consequently, it did not matter which was which.

We hold that termination of parental rights under subsections 19b(3)(b) and (k) is permissible even in the absence of definitive evidence regarding the identity of the perpetrator, where the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries. The evidence so shows here, where A. Ellis suffered numerous non-accidental injuries that likely occurred on more than one occasion, the parents live together, the parents share child care responsibilities, and the parents are the child's sole caregivers. The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. In addition, termination of respondents' parental rights was in the child's best interests.

Affirmed.

/s/ Karen Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause